

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 507/09

Principal facts

Personal details

1. Mr X is aged 35 and is a citizen of the People's Republic of China (PRC). Mr X's wife, 10-year-old son, parents and siblings live in the PRC and he is in regular contact with them.

Detention history

2. On 21 September 2006 Mr X was detained under a false name under s 189(1) of the *Migration Act 1958* and placed at Villawood Immigration Detention Centre (IDC).

Visa applications

3. Mr X entered Australia on a Tourist Visa (TV) in May 2005 using a false Indonesian passport; applied for a Protection Visa (PV) in a false name; granted an associated Bridging Visa (BV) valid to May 2006; PV refused (April 2006); confirmed identity as a PRC national with the name Mr X (November 2006); applied for a PV which was deemed invalid (December 2006); lodged s 48B request (December 2006), assessed as meeting the guidelines (October 2007); s 48B submission referred to the Minister, Minister agreed to request (November 2007); lodged new PV application and associated BV application (November 2007); BV application withdrawn (December 2007); PV application refused (January 2008); the Refugee Review Tribunal (RRT) affirmed the Department's (DIAC) decision (April 2008); appealed RRT decision to the Federal Magistrates Court (FMC), dismissed (October 2008); s 195A submission referred to the Minister as part of the further review of long term detainees (September 2008); the Minister declined to intervene (October 2008); combined s 417/48B request lodged (November 2008), ongoing.

Current immigration status

4. Mr X is an unlawful non-citizen detained at Villawood IDC.

Removal details

5. DIAC advises that removal processes will be activated subject to the outcome of Mr X's combined s 417/48B request.

Ombudsman consideration

6. DIAC's report to the Ombudsman under s 486N is dated 25 September 2008.
7. Ombudsman staff interviewed Mr X on 29 October 2008 at Villawood IDC and spoke with him by telephone on 30 October 2008.
8. Ombudsman staff sighted a medical summary report from International Health and Medical Services (IHMS) dated 21 August 2008 and a copy of a combined s 417/48B request dated 14 November 2008.

Key issues

Criminal history

9. DIAC advises that after investigating Mr X's part in a large Indonesian identity fraud ring it has established that he was a minor participant. It further advises that Mr X has provided *'important information regarding the facilitator'*.

Health and welfare

10. The IHMS report notes that a Mental State Examination was conducted in August 2008 and *'no significant mental health issues have been identified'*.
11. At interview with Ombudsman staff Mr X reported that his physical condition was deteriorating due to weight loss and stomach pain. He said that he had recently started taking medication which has alleviated his stomach pain but eats *'only one or two meals a day [as] I don't feel hungry.'*

Attitude to removal

12. Mr X said that he was forced to leave the PRC due to persecution following a dispute with the government over land ownership. He further stated that he was arrested and tortured in the PRC for his religious beliefs. He said that he practised an unofficial form of Christianity which the PRC government *'regarded as an evil religion'*. He stated that he misses his family but they have advised him not to return to the PRC as they believe he will be persecuted for his involvement in the land dispute and for his religious beliefs.
13. The RRT decision of April 2008 accepted that Mr X is a Christian but *'does not accept that the authorities were ever or are interested in the applicant for the reason of his past association with an underground church or for having defied the authorities in participating in any related illegal activities'* and *'is not satisfied that the applicant has a well-founded fear of persecution in China'*.
14. In a follow up telephone conversation with Ombudsman staff Mr X said that he had signed a travel document application as he had seen other detainees being forcibly removed and he did not want this to happen to him. However, he was concerned that by so doing he may have given *'the wrong impression that I was not scared to return'*.

Other detention issues

15. Mr X said that when he was first detained he was told he could seek legal assistance but *'I don't speak English so I didn't know how to seek legal aid'*. He said that subsequently he was visited by a supporter who helped him secure a lawyer.
16. Mr X said that when he first came to Villawood IDC he participated in sports and studied English but *'now I don't feel like doing anything'*. He said that *'sometimes I play cards with my friends'* and attends church services, but commented that life in the detention centre *'is very boring'*.
17. Mr X said that if he was allowed to stay in Australia *'I would go to work and also go to religious services'*. He said that *'I can do a lot of things, if they don't require too much specialised knowledge—when I came to Australia I worked in a restaurant'*.

Ombudsman assessment/recommendation

18. Mr X has remained in immigration detention since September 2006. DIAC's decision that Mr X does not qualify for protection by Australia has been reviewed and affirmed by the RRT. The Ombudsman has no further comment on this matter.

19. Mr X is awaiting the outcome of a combined s 417/48B request currently before the Minister. As there is no immediate resolution in sight of Mr X's immigration status and in line with the new Immigration Detention Values, the Ombudsman **recommends** that the Minister consider placing Mr X into a community detention arrangement or grant him an appropriate visa until his immigration status is resolved.



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Prof. John McMillan
Commonwealth and Immigration Ombudsman



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Date